

Before the
Federal Communications Commission
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)

Request for Waiver by)

Des Moines Public Schools)

Des Moines, Iowa)

Federal-State Joint Board on)

Universal Service)

Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-267486

CC Docket No. 96-45✓

CC Docket No. 97-21

ORDER**Adopted: October 4, 2002****Released: October 7, 2002**

By the Telecommunications Access Policy Division, Wireline competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Des Moines Public Schools, Des Moines, Iowa (Des Moines).¹ Des Moines seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² Specifically, Des Moines seeks a waiver of the Funding Year 2001 filing deadline to allow consideration of its application as timely filed within the filing window.³ For the reasons that follow, we deny Des Moines's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Greg Davis, Des Moines Public Schools, to Federal Communications Commission, dated April 2, 2002 (Waiver Request); see also Letter from Greg Davis, Des Moines Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated July 31, 2001 (SLD Appeal).

² See Waiver Request. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ *Id.* In prior years, this funding period was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus, the funding period which begins on July 1, 2001 and ends on June 30, 2002, previously known as Funding Year 4, is now called Funding Year 2001. The funding period which begins on July 1, 2000 and ends on June 30, 2001, is now called Funding Year 2000.

⁴ 47 C.F.R. §§ 54.501, 54.502

technological needs and the services for which it seeks discounts.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁶

3. Under the Commission's regulations, SLD is authorized to establish program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.⁷ Pursuant to this authority, every funding year, SLD establishes and notifies applicants of a "minimum processing standard" to facilitate the efficient review of the thousands of applications requesting funding.⁸ In Funding Year 2001, SLD instructions stated that minimum processing standards required applicants to use *the* correct form.⁹ When an applicant submits an application that does not comply with an item subject to the minimum processing standard, SLD automatically rejects the application and returns it to the applicant. The Wireline Competition Bureau (Bureau) (formerly the Common Carrier Bureau) has upheld SLD's minimum processing standard of requiring the applicants to use the correct form.¹⁰

4. The Commission's rules also allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.¹¹ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.¹² It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

5. On January 19, 2001, Des Moines submitted a FCC Form 471 seeking discounts for Funding Year 2001.¹³ The application consisted of 6 blocks of information.¹⁴ Blocks 1, 2, 3,

⁵ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁶ 47 C.F.R. § 54.504(c).

⁷ See 47 C.F.R. § 54.507(c); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

⁸ See, e.g., SLD website, Form 471 Minimum Processing Standards and Filing Requirements for **FY** 2001, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Funding Year 2001 Minimum Processing Standards).

⁹ *Id.*

¹⁰ See *Request for Review by Fair Lawn Board of Education. Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-10-99.02300008 and NEC.471.11-19-99.01100003, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 12901 (Com. Car. Bur. 2001) (upholding SLD's minimum processing standard that required applicants to use the correct FCC Forms for the funding years in which they were applying).

¹¹ 47 C.F.R. § 54.507(c)

¹² 47 C.F.R. § 54.507(g)

¹³ FCC Form 471, Des Moines Public Schools, filed January 19, 2001

and 6 of Des Moines's application used the Funding Year 2000 FCC Form 471, as indicated by the September 1999 date in the lower right hand corner.¹⁵ However, the remaining pages, which included the applicant's Block 4 and Block 5 information, used the correct Funding Year 2001 Form 471.¹⁶ On March 20, 2001, SLD rejected Des Moines's FCC Form 471 because Des Moines's Form 471 failed to meet minimum processing standards for Funding Year 2001.¹⁷ Specifically, SLD stated that Des Moines's FCC Form 471 had been rejected because Des Moines had not used the correct OMB-approved FCC Form 471 for Funding Year 2001.¹⁸

6. On July 31, 2001, Des Moines filed an appeal with SLD.¹⁹ In its appeal to SLD, Des Moines acknowledged using the wrong form for portions of its application.²⁰ Des Moines argued, however, that although the wording had changed slightly from the Funding Year 2000 application to the Funding Year 2001 application, no additional information was required from applicants.²¹ In addition, Des Moines submitted a revised Form 471 on the correct form, and requested that SLD consider its entire Form 471 as complete and timely filed.²²

7. On February 8, 2002, SLD issued an Administrator's Decision on Appeal denying Des Moines' appeal.²³ SLD explained that program rules require that applicants in Funding Year 2001 use the October 2001 version of the Form 471.²⁴ SLD also noted that Block 6 of the October 2001 version of the Form 471 required additional certifications than the September 1999 version.²⁵

8. Des Moines then filed the instant Waiver Request, requesting that the revised FCC Form 471 it submitted for Funding Year 2001 be considered as complete and timely filed.²⁶ Des

¹⁴ *Id.*

¹⁵ *Id.*; *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Funding Year 2000 Form 471).

¹⁶ *Id.*; *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Funding Year 2001 Form 471).

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Greg Davis, Des Moines Independent School District, dated March 20, 2001 (Minimum Processing Standards Rejection Letter).

¹⁸ *Id.*

¹⁹ SLD Appeal.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Greg Davis, Des Moines Public Schools, dated February 8, 2002.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Waiver Request

Moines argues that special circumstances warrant a deviation from the Commission's general rules.²⁷ In particular, Des Moines states that it invested a substantial amount of time and resources in completing its application and that due to its complexity, Des Moines was unable to use an electronic form. In addition, Des Moines points out that the correct forms were not available until after the start of the application window.²⁹ Des Moines further suggests that SLD could have easily remedied Des Moines's error over the phone and that the large majority of the information was correct.³⁰ Finally, Des Moines asserts that it is in the public interest to consider its application because denial of its application would be overly harsh.³¹ Des Moines also includes a revised copy of its Form 471 application with all pages on the correct, OMB-approved Form 471 with October 2002 in the lower right-hand corner.³²

9. After review of the record, we find no basis to grant Des Moines's Waiver Request.³³ A waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.³⁴ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.³⁵ Based on these facts, Des Moines has failed to demonstrate special circumstances that would warrant treating Des Moines differently by granting it a waiver.

10. The Bureau has previously indicated that the size and complexity of an application that an applicant chooses to submit to the Administrator does not establish good cause to waive the Commission's rules.³⁶ Consistent with these precedents, we do not believe that the amount of time or resources that Des Moines decided to spend preparing its application establishes special circumstances. In addition, the Bureau's precedent is clear that applicants bear the

²⁷ *id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *id.*

³² *id.*

³³ *id.*

³⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

³⁵ *Northeast Cellular*, 897 F.2d at 1166.

³⁶ See, e.g., *Request for Review by the Information Technology Department, State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Dockets Nos. 96-45 and 97-21, Order, 17 FCC Rcd 7383 (Com. Car. Bur. 2002); *Request for Review by Central Minnesota Computing Center, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-143701, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 7110, 7115 (Com. Car. Bur. 2001) ("Where schools and libraries choose to apply as a consortium to obtain the resulting advantages, the consortium must be prepared to accept the associated burdens as well.").

responsibility of determining that they are using the correct year's ~~form~~ form. Applicants bear this same responsibility, regardless of whether they file an electronic or paper application. As a result, even if it was not feasible to complete an electronic application – as alleged by Des Moines in its Waiver Request – it was Des Moines's responsibility to follow program rules and use the correct form for its paper application.

11. Additionally, we do not agree with Des Moines' argument that the Funding Year 2001 Forms 471 did not become available until after the start of the application process. According to SLD, the form became available on November 2, 2000, and the filing window for FCC Form 471 applications opened on November 6, 2000.³⁸ Regardless of the fact that Des Moines began preparing its application in August, it is incumbent upon applicants to determine whether their applications are in compliance with program requirements prior to filing. It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.³⁹ Because applications may change from year to year, we find that applicants bear the responsibility of determining whether or not the complete and correct form is being used.

12. Further, we are not persuaded by Des Moines's assertion that its error could have been easily remedied because the portions of its application that it submitted on the Funding Year 2000 Form 471 contained "99%" of all the information necessary for SLD to process the application.⁴⁰ In fact, there were several changes to the Funding Year 2001 FCC Form 471, including changes to Block 6, the certification ~~page~~ page. Because SLD must review and process thousands of applications each funding year, it would be administratively burdensome if SLD were to accept the Funding Year 2000 Form 471 only to return to the applicant to collect missing information or acquire additional certifications that are required in the Funding Year 2001 Form 471. In this program, using the correct ~~form~~ form and providing the correct information is particularly relevant in processing an applicant's application. Moreover, as we have held in the past, Des Moines's argument that denial of its application is overly harsh and may have a detrimental impact on the school district does not provide adequate basis for a waiver of the Commission's rules.⁴²

³⁷ See *Request for Review by South Barber Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-158897, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 18435 (Com. Car. Bur. 2001).

³⁸ See SLD web site, What's New November 2000
<<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

³⁹ See generally Funding Year 2001 Minimum Processing Standards (outlining the manual and online filing requirements for FCC Form 471).

⁴⁰ Waiver Request

⁴¹ Compare Funding Year 2001 FCC Form 471 at Block 6 with Funding Year 2000 FCC Form 471 at Block 6 (the Funding Year 2001 FCC Form 471 also requires applicants to certify that "if audited, [the applicant] will make available to the Administrator such records").

⁴² See, e.g., *Request for Review by ACCEPT Education Collaborative, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-267054, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 5987 (2002) (denying a request for waiver of the

13. In conclusion, we do not believe that it is appropriate to waive the filing window deadline to consider the revised FCC Form **471** Des Moines submitted **as** timely **filed**.⁴³ The FCC Form 471 instructions state that if **a** school or library does not provide the information requested on this form, “the processing of your application may be delayed or your application may be returned to you without action.”⁴⁴ Applicants that fail to properly complete the required application or otherwise fail to follow program rules, run the **risk** that their applications may not be considered within the filing window. We therefore conclude that, under these circumstances, Des Moines has failed to make a showing warranting relief and, therefore, its Waiver Request must be denied.

14. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed April 2, 2002 by Des Moines Public Schools, Des Moines, Iowa, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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Wireline Competition Bureau

Commission's rules based on the assertion that the denial will have harsh ramifications); *Request for Review by Northern Waters Library Service, Federal-Slate Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-I83124, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 1756 (Conn. Car. Bur. 2002) (denying a request for waiver of the Commission's rules based on the assertion that denial would cause the applicant hardship).

⁴³ See Waiver Request; SLD Appeal Letter.

⁴⁴ *Id.*